

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

V.

DONNIE BARNES, SR.,

Defendant.

| NO. CR18-5141 BHS

GOVERNMENT'S PROPOSED VOIR DIRE

Comes now the United States of America, by Brian T. Moran, United States Attorney for the Western District of Washington, and Matthew P. Hampton and Lyndsie R. Schmalz, Assistant United States Attorneys, for said District, and submits the following proposed *voir dire* questions in the above-captioned matter. Along with these questions, the Government includes a proposed confidential jury questionnaire, attached hereto. This questionnaire addresses matters of particular sensitivity and that may be very private but could be relevant to jury service in this particular case. The government has shared the proposed questionnaire with defense counsel prior to filing, but the defense is still reviewing the matter to determine its position on the government's proposed questionnaire.

Familiarity with Case and Legal Personnel

1. Have you ever heard of this case before today?

2. Do you know me or any member of my court staff?
 3. Do you know any of the attorneys in this case?
 4. Do you know the Defendant in this case?
 5. Do you know any of the witnesses in this case? (Court or counsel to read witness lists.)

Prior Experience in Court Proceedings

6. Have you ever served on a jury before?
 7. For those who have served on a jury, is there anyone whose jury was not able to reach a verdict?
 8. Have you previously been a witness in any court proceeding?
 9. Other than for minor traffic offenses and dissolutions, have any of you had to appear in court for any reason?

Familiarity with Criminal Justice System

10. Do you work for the court system?
 11. Are you close to anyone who works for the court system?
 12. Do you have any training in the field of law or law enforcement?
 13. Do you have any work experience in the field of law or law enforcement?
 14. Do you work or volunteer for federal, state, or local law enforcement?
 15. Are any of you a criminal defense lawyer or employed by a criminal defense lawyer or law firm?
16. Are any of your relatives a criminal defense lawyer or employed by a criminal defense lawyer or law firm?
 17. Are any of your close friends a criminal defense lawyer or employed by a criminal defense lawyer or law firm?
 18. Do you work for a prosecuting attorney's office?
 19. Are you close to anyone who works for a prosecuting attorney's office?
 20. Have you ever been the victim of a crime?
 21. Have you ever been charged with, or investigated for, a criminal offense?

- a. Do you believe you were treated fairly by law enforcement?
- b. Do you believe that you were treated fairly by the legal system?

22. Has anyone close to you ever been charged with, or investigated for, a criminal offense?

a. Do you believe that this person was treated fairly?

23. Have you ever had a particularly positive experience with law enforcement?

24. Have you ever had a negative experience with law enforcement?

9 25. You will be hearing from several law enforcement witnesses during the
10 course of this trial. Would you give greater credence to the testimony of a law
11 enforcement officer because of the fact that he or she is a law enforcement officer?

12 26. Would you tend to doubt the testimony of a law enforcement officer
13 because of the fact that he or she is a law enforcement officer?

14 27. Have you ever been involved in a dispute with any law enforcement
15 personnel?

a. Do you believe you were treated fairly?

17 28. Has anyone close to you ever been involved in a dispute with any law
18 enforcement personnel?

a. Do you believe this person was treated fairly?

20 29. Have you or anyone close to you ever been involved in any lawsuit
21 involving the federal government?

22 30. Have any of you had a negative experience with, or do you hold strong
23 opinions about, the United States government that would prevent you from being fair and
24 impartial in this case?

Child Exploitation

26 31. The charges in this case involve allegations that relate to the production and
27 possession of child pornography. Do you have feelings about these charges that would
28 prevent you from being able to render a fair and impartial verdict in this case?

1 32. In this case, the evidence may include explicit references to female
2 genitalia, male genitalia, and sexual acts. Is there anyone who believes that he or she
3 would be so embarrassed, uncomfortable, or offended by such evidence or that he or she
4 could not listen to it and give it the same consideration as any other evidence in the case?

5 33. In this case, the evidence may include pornographic images. Is there
6 anyone who believes that he or she would be so embarrassed, uncomfortable, or offended
7 by such evidence that he or she could not view this evidence and give it the same
8 consideration as any other evidence in the case?

9 34. Although adult pornography is constitutionally protected, and therefore
10 legal, Congress has made it illegal to possess, distribute, receive, transport or produced
11 child pornography. The defendant is charged with offenses relating to the possession,
12 attempted production, and production of child pornography.

13 a. Do you have strong feeling about the child pornography laws of the
14 United States?

15 b. Would those feelings influence you in this particular case?

16 c. Do you have strong feelings about adult pornography?

17 d. Would those feelings influence you in this particular case?

18 35. Do you have any training in the fields of computers, or specialized
19 knowledge of computers? If so, please describe your training and specialized knowledge.

20 **Duties of Jurors**

21 36. Do you feel that you possess any kind of prejudice with reference to the
22 Defendant or this case?

23 37. Do you have any personal or moral beliefs that prevent you from sitting in
24 judgment of, or returning a verdict against, another person?

25 38. Do you think, as a matter of conscience, that you might not convict a
26 Defendant of a crime even though the evidence proved that defendant guilty beyond a
27 reasonable doubt?

1 39. As a juror in a criminal case, your obligation would be to listen to the
2 evidence and from that determine the facts according to the law given to you by the
3 Court. You must follow the Court's instructions on the law even if you disagree with
4 them. Would you be unable or unwilling to follow the Court's instructions if you thought
5 the law was unwise or wrong?

6 40. You may have seen or heard about television shows such as *CSI*, where
7 crimes are solved using forensic science such as fingerprint and DNA evidence. The law
8 does not require this. Is there anyone here who would find it difficult to convict someone
9 without this kind of forensic evidence?

10 41. The trial is expected to last for three to four days. There is no time limit on
11 the amount of time that any particular jury may deliberate. Is there any juror who cannot
12 be here for the anticipated duration of the trial?

13 42. Do any of you have any physical impairments, such as a bad back, that
14 would cause you to not be able to concentrate on the proceedings in court for an extended
15 period of time?

16 43. Do any of you have any family or employment-related obligations that
17 would cause you to not be able to concentrate on the proceedings in court for an extended
18 period of time?

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1 44. Can any of you think of any reason that would prevent you from being able
2 to render a fair and impartial verdict based solely on the evidence and the law as the
3 Court will instruct you at the conclusion of this case?

DATED this 18th day of October, 2019.

Respectfully submitted,

BRIAN T. MORAN
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s/ Lyndsie R. Schmalz
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant.

s/ Becky Hatch
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